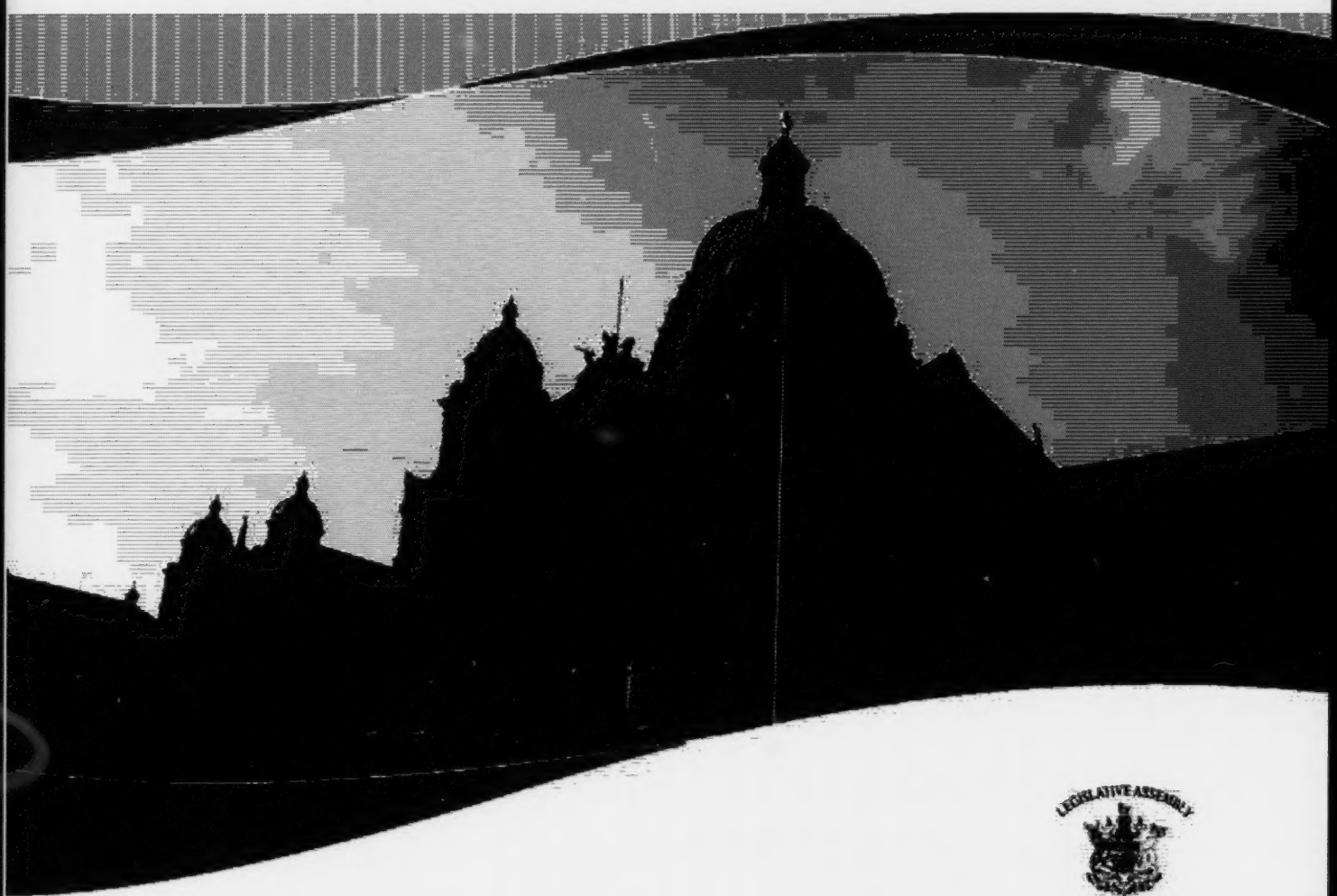
REPORT | FOURTH SESSION | THIRTY-NINTH PARLIAMENT

Select Standing Committee on Children and Youth

Review of the *Representative for Children and Youth Act*



MAY 2012

May 3, 2012

To the Honourable
Legislative Assembly of the
Province of British Columbia

Honourable Members:

I have the honour to present herewith the Report of the Select Standing Committee on Children and Youth on its review of the *Representative for Children and Youth Act.*

The Report covers the work of this Committee from September 7, 2011 to May 1, 2012.

Respectfully submitted,

Joan McIntyre, MLA
Chair

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Composition of the Committee

Members

Joan McIntyre, MLA	Chair	West Vancouver-Sea to Sky
Claire Trevena, MLA	Deputy Chair	North Island
Mable Elmore, MLA		Vancouver-Kensington
Gordon Hogg, MLA		Surrey-White Rock
Douglas Horne, MLA		Coquitlam-Burke Mountain
Leonard Krog, MLA		Nanaimo
Kevin Krueger, MLA		Kamloops-South Thompson
Richard T. Lee, MLA		Burnaby North
Barry Penner, MLA*		Chilliwack-Hope
Nicholas Simons, MLA		Powell River-Sunshine Coast
Dr. Moira Stilwell, MLA		Vancouver-Langara

*Committee Member to January 9, 2012

Committee Staff

Kate Ryan-Lloyd, Deputy Clerk and Clerk of Committees

Byron Plant, Committee Research Analyst

Terms of Reference

On June 2, 2011 and October 3, 2011, the Legislative Assembly agreed that the Select Standing Committee on Children and Youth be appointed to be empowered to foster greater awareness and understanding among legislators and the public of the BC child welfare system, and in particular to:

1. Be the committee that receives and reviews the annual service plan from the Representative for Children and Youth (the "Representative") that includes a statement of goals and identifies specific objectives and performance measures that will be required to exercise the powers and perform the functions and duties of the Representative during the fiscal year;
2. Be the committee to which the Representative reports, at least annually;
3. Refer to the Representative for investigation the critical injury or death of a child; and
4. Receive and consider all reports and plans delivered by the Representative to the Speaker of the Legislative Assembly of British Columbia.

In addition to the powers previously conferred upon Select Standing Committees of the House, the Select Standing Committee on Children and Youth be empowered:

a. to appoint of their number, one or more subcommittees and to refer to such subcommittees any of the matters referred to the Committee;
b. to sit during a period in which the House is adjourned, during the recess after prorogation until the next following Session and during any sitting of the House;
c. to adjourn from place to place as may be convenient; and
d. to retain personnel as required to assist the Committee;

and shall report to the House as soon as possible, or following any adjournment, or at the next following Session, as the case may be; to deposit the original of its reports with the Clerk of the Legislative Assembly during a period of adjournment and upon resumption of the sittings of the House, the Chair shall present all reports to the Legislative Assembly.

Executive Summary

Section 30 of the *Representative for Children and Youth Act* (SBC, 2006, c. 29) requires the Select Standing Committee on Children and Youth (the Committee) to undertake a review of the Act within five years of the coming into force of the functions of the Representative for Children and Youth (the Representative). An independent officer of the Legislature, the Representative has a mandate that includes advocating for children, youth and families, providing oversight of the child- and youth-serving system, and investigating deaths and critical injuries involving children.

In September 2011, the Committee commenced a review of the Act and over the following months consulted with expert witnesses and key stakeholders. A public call for written submissions was also advertised, inviting stakeholder groups and citizens to provide input on the legislation. During the consultation period, the Committee heard considerable support for the legislation and the work of the Representative. In addition, several proposals were made to amend the Act.

This report contains seven recommendations that are designed to enhance the functioning of the legislation while the Representative continues to provide valuable services for children and youth and their families. These include recommendations to expand and review parts of the Representative's mandate, improve provisions for appointing an acting Representative, facilitate information sharing between the Representative's office and public bodies, and strengthen reporting requirements. It is also recommended that the Act be amended to allow for future reviews of the legislation.

The Statutory Framework

In November 2005, Hon. E. N. (Ted) Hughes, QC was appointed to conduct an independent review of British Columbia's child protection system, and to make recommendations for improvement in the areas of monitoring and pubic reporting of government performance; advocacy for children and youth; the system for the review of child deaths; and public reporting of child death reviews.

On April 7, 2006, the *BC Children and Youth Review: An Independent Review of BC's Child Protection System* (Hughes Review) was released. The report contained 62 recommendations for changes to the child welfare system, including the appointment of a new independent officer of the Legislature, the Representative for Children and Youth. Hughes also recommended that a new standing committee be struck, and that the Representative and Deputy Representative report to this committee, at least annually.

The provincial government endorsed all of the Hughes Review recommendations and established a transition team to oversee their implementation. In May 2006, Bill 34 – *Representative for Children and Youth Act* was introduced. Unanimously passed by the Legislative Assembly, the Act established authority for the creation of a new independent officer of the Legislature, the Representative for Children and Youth. The Representative was given a three part mandate that includes advocacy for children and youth, and their families; monitoring of the child- and youth-serving system; and reviews, investigations, and reports of critical injuries and deaths of children. The Act also stipulated that the Representative report to a new standing committee of the Legislative Assembly, the Select Standing Committee on Children and Youth.

In accordance with the legislation, a person may be appointed as Representative by resolution of the Legislative Assembly, on the recommendation of a special committee, for a five-year term, renewable for up to one additional term. The province's first Representative for Children and Youth, Mary Ellen Turpel-Lafond, was appointed on November 27, 2006. She was re-appointed for a second term on November 15, 2011.

Legislative Timeline: *Representative for Children and Youth Act*

Passed in 2006, the *Representative for Children and Youth Act* was brought into force in stages and has undergone several amendments.

May 4, 2006: Bill 34 – *Representative for Children and Youth Act* was introduced in the Legislative Assembly. The Act (SBC, 2006, c. 29) received Royal Assent on May 18, 2006 but was not brought into force at that time.

November 21, 2006: some sections of the Act were proclaimed into force allowing for the creation of the Office of the Representative for Children and Youth and the hiring of staff (BC Reg 303/2006).

March 8, 2007: Bill 7 – *Child and Youth Statutes (Representation Improvement) Amendment Act, 2007* was introduced. Given Royal Assent on March 29, the Act (SBC, 2007, c. 5) amended several sections of the *Representative for Children and Youth Act*, including the functions of the Representative under section 6.

March 30, 2007: some sections of the Act were brought into force, including the Representative's advocacy and monitoring functions under section 6 (BC Reg 88/2007).

June 1, 2007: additional sections of the Act, including the Representative's final function under section 6, reviews and investigations of critical injuries and child deaths, were proclaimed into force (BC Reg 142/2007).

June 21, 2007: a minor amendment to the Act consequential on the new *Public Inquiry Act* (SBC 2007, c. 9) was proclaimed into force (BC Reg 226/2007). The amendment changed the Representative's power to compel evidence in an investigation.

September 26, 2007: an amendment to the Act consequential on the new *Coroners Act* (SBC 2007, c. 15) was proclaimed into force (BC Reg 298/2007). The amendment clarified the relationship between a Representative's critical injury or death investigation and the exercise of the coroner's mandate.

May 29, 2008: *Miscellaneous Statutes Amendment Act (No. 2), 2008* was passed (SBC 2008, c. 42) and brought into force. The amendment clarified the Representative's powers to disclose information.

The legislation also includes the Representative for Children and Youth Act Regulation (BC Reg 103/2007). The regulation specifies provisions for the hiring of the Deputy Representative, additional designated and reviewable services for the purposes of the Act, and guidelines for the appointment of a multidisciplinary team.

2011-12 Statutory Review

The *Representative for Children and Youth Act* requires a review of the legislation to be undertaken by the Select Standing Committee on Children and Youth within five years of the coming into force of the Representative's functions. Section 30 of the Act states:

> To determine whether the functions of the representative described in section 6 are still required to ensure that the needs of children are met, the standing committee, within 5 years of the coming into force of section 6, must undertake a comprehensive review of this Act or a review of portions of this Act.

On September 7, 2011, the Committee approved a work plan for the statutory review and agreed to hear presentations on the legislation from the Representative for Children and Youth, the Deputy Minister of the Ministry of Children and Family Development, and Ted Hughes. The Committee also decided to issue a public call for submissions and to invite written submissions from stakeholders whose work may be affected by the Act.

The Consultation Process

Presentations

On October 6, 2011, the Representative for Children and Youth appeared before the Committee as the first presenter for the statutory review. The Representative proposed two amendments to the Act to enhance her functions for youth transitioning to adulthood and for children in care and education. A formal written submission was also distributed to Committee Members.

The Deputy Minister of the Ministry of Children and Family Development appeared next on October 20, 2011. The Deputy Minister's presentation contained additional proposals to amend the Act with respect to monitoring, review, audit, and research of designated services, as well as the role of the Select Standing Committee on Children and Youth. A formal written submission from the Ministry was also received.

The third presenter, Ted Hughes, appeared before the Committee on November 3, 2011. Mr. Hughes reviewed the two previous presentations to the Committee by the Representative and the Deputy Minister, and proposed a revised timeline for the Ministry's proposal concerning monitoring, review, audit, and research of designated services.

One additional follow-up meeting, jointly attended by the Representative and the Deputy Minister of Children and Family Development, was held on February 22, 2012. At that meeting, the Representative tabled a final submission to the Committee containing follow-up information and additional recommendations for the Committee's consideration.

The schedule of meetings is contained in Appendix A.

Written Submissions

The Committee accepted written submissions from stakeholder groups and citizens from October 7 to November 25, 2011. A public call for submissions was posted on the Committee website. An advertisement was also placed in several provincial daily newspapers.

Input was accepted via a web-based submission form, as well as by email, fax, and regular mail. In addition to the public call for submissions, 44 stakeholder organizations were sent a letter inviting written commentary on the Act.

A total of 15 written submissions were received during the consultation period. A list of written submissions is contained in Appendix B.

Part 2 – Appointment of Representative

A person may be appointed as Representative by resolution of the Legislative Assembly, on the recommendation of a special committee. The term of the appointment is five years and may be renewed for one additional term. Part 2 describes the appointment process, along with guidelines for remuneration; resignation, removal, or suspension of the Representative; and the appointment of an acting Representative.

During its review of the Act, the Committee considered proposals to change the appointment provisions in the Act.

Section 5 Appointment of Acting Representative

Section 5 describes the processes for appointing an acting Representative if the Representative is suspended, the office is vacant, or the Representative is temporarily absent because of an illness or another reason. If the House is sitting, an acting Representative may be appointed by the Legislative Assembly, on the recommendation of the Committee. If the House is not sitting, and is not scheduled to sit within five days, an acting Representative may be appointed by the Committee.

The Representative's final submission to the Committee pointed out that no appointment provisions exist in the Act if the House is dissolved and the Committee is not constituted, which is the case immediately before or after a provincial general election. The Representative proposed that a new provision be added to section 5 to permit the appointment of an acting Representative by the Lieutenant Governor in Council if the House is dissolved and the Committee is not constituted.

The Committee agrees that the position of Representative must be occupied on a continual basis, and that an amendment to the Act is needed to address this gap in the legislation.

Recommendation #1:

Allow for the appointment by the Lieutenant Governor in Council of an acting Representative if the Representative is suspended, the office is vacant or the Representative is temporarily absent because of illness or another reason, and the House is dissolved and the Select Standing Committee on Children and Youth is not constituted.

Part 3 – Representative's Functions and General Powers

Part 3 describes the functions and general powers of the Representative, including the three main components of the Representative's mandate under section 6: (a) advocating for children and youth and their families who need help in dealing with designated services; (b) monitoring, review, audit, and research on the provision of designated services; and (c) reviewing and investigating critical injuries and child deaths. Other sections under Part 3 provide for the Representative's hiring of staff; power to delegate; restricted ability to act as legal counsel; and right to information in the custody or control of public bodies.

The Committee received several submissions calling for changes to some of the functions of the Representative. Other suggestions were made to modify the criteria for the hiring of staff; clarify the Representative's legal powers; and strengthen the Representative's right to information.

Section 6 Functions of Representative

Services for Young Adults in Transition

Section 6(a) describes the Representative's advocacy function, which includes supporting, assisting, informing, and advising children and their families respecting designated services defined in the Act.

In her submission to the Committee, the Representative stated that a legal conflict exists in the Act because "child" is defined as "a person under 19 years of age," but "designated services" is expressly defined to include "services for youth and young adults during their transition to adulthood." The Committee was told that this poses a problem when the Representative is advocating on behalf of a person transitioning to adulthood, particularly a youth with developmental disabilities who is moving to Community Living BC.

The Committee considered proposals to amend the Act, along with several written submissions calling for the Representative's advocacy mandate to include young adults in transition. Members concluded that the Representative should be authorized to provide advocacy services to vulnerable British Columbians aged 19 and 24 who are transitioning into Community Living BC. The Committee also agreed that the Representative be permitted to advocate for young adults aged 19 to 24 who have received reviewable services as defined under the *Representative for Children and Youth Act* immediately prior to turning 19 years of age.

Recommendation #2:

Allow the Representative to provide advocacy services to young adults between 19 and 24 years of age who are transitioning into the Community Living BC system and/or have received a reviewable service as defined under the *Representative for Children and Youth Act* within 15 months of their 19th birthday.

Review of the Representative's Monitoring Function

The 2006 Hughes Review stated that formal oversight by an external body may not be necessary in the future, and that the Ministry's own performance measurement system, quality assurance programs, and public reporting may be sufficient to assure British Columbians that vulnerable children and youth are being protected as they should be.

The Ministry of Children and Family Development's formal submission to the Committee outlined steps underway to establish a credible system of performance measurement and quality assurance linked to public reporting. To implement the changes contemplated by the Hughes Review, it was proposed that a new provision be added to the Act allowing for the Representative's monitoring, review, and audit functions under section 6(b) to be concluded in two years (excluding the research function), subject to a decision by the Committee and sustained and credible action by the Ministry.

In his November 3, 2011 presentation to the Committee, Ted Hughes voiced agreement with the Ministry's plan, but suggested that the review take place in three years. This would permit more time for the Ministry's plans to be implemented while also allowing the Representative to operate under a revised mandate prior to the appointment of a successor.

The Committee sees merit in the Ministry's proposal to review this part of the Representative's mandate, along with the suggestion by Mr. Hughes to adopt a three-year time frame.

Recommendation #3:

Require the Select Standing Committee on Children and Youth to complete a review of the Representative's monitoring functions described in section 6(b) by April 1, 2015.

Part 4 – Reviews and Investigations of Critical Injuries and Deaths

The Representative's mandate includes powers to review and investigate critical injuries and deaths involving a child. The Act stipulates that a critical injury or death of a child who was receiving, or whose family was receiving, a reviewable service must be reported by a public body to the Representative for review. Following the completion of a review, the Representative may commence an investigation if it is determined that the critical injury or death involved service delivery issues, unusual or suspicious circumstances, or was self-inflicted or inflicted by another person. The Committee can also refer a critical injury or death of a child to the Representative for investigation.

During the consultation period, the Committee received proposals to change some of the protocols for commencing investigations and for disclosing the results of reviews with a public body. The Committee also considered suggestions to change the criteria for investigations and how deaths are reported to the Representative.

Section 13 Jurisdiction of Representative in Investigations

Section 13 prohibits the Representative from conducting an investigation of a critical injury or death of a child until the completion of a criminal investigation and court proceedings; a coroner's investigation; or an investigation by a public body or director responsible for the provision of a reviewable service. The Representative may, however, investigate while there is an investigation by a coroner or public body, if one year has passed since the critical injury or death.

The Committee considered a proposal by the Representative to relax the bar concerning an investigation by a public body or director. The Committee heard how the requirement to wait until either the completion of the investigation or for one year is unduly limiting, particularly if the Ministry does not object to the Representative commencing an investigation.

The Committee believes that it would be beneficial to allow the Representative to investigate earlier than one year after the critical injury or death of a child, but only if the investigation is requested and consented to by a public body.

Recommendation #4:

Authorize the Representative to investigate the critical injury or death of a child if a public body requests and provides written consent despite 13(1)(c).

Section 16 Reports after Reviews and Investigations

Following an investigation of a critical injury or death of a child, the Representative is required to produce a report which may contain recommendations for improving a reviewable service by a public body. The Representative also may produce a report containing aggregated information based on several reviews and/or investigations. Completed reports are referred to the Committee for consideration.

In her final submission to the Committee, the Representative asked for a minor amendment to the Act to explicitly authorize the disclosure of results from an individual review with the responsible public body. Such a sharing of information, it was noted, would allow learning opportunities to be discussed informally with the Ministry, separate from the more formal and costly investigation process. A provision already exists in the Act for disclosures of the results of aggregated reviews and investigations.

The Committee supports the intent of the proposal and is mindful of the Representative's restricted ability under section 23 to divulge information unless expressly authorized in the Act. It is therefore recommended that necessary changes be made to allow the Representative to disclose the results of individual reviews, as is currently permitted with respect to the results of investigations and aggregate reviews.

Recommendation #5

Allow the Representative to disclose the results of an individual review with the public body or director responsible for the reviewable service.

Part 5 – Administrative and General Provisions

Part 5 contains additional provisions for administration and general operations. For example, the Representative must prepare and deliver every year a rolling three-year service plan and a budget containing estimates the coming fiscal year. An annual report must also be submitted each year before September 30. Other sections provide for special reports; other financial requirements; agreements; confidentiality and disclosure; regulations; and review of the Act.

During its consultation period, the Committee heard proposals to revise reporting guidelines and to require future reviews of the legislation. Other submissions called for changes to accounting standards and how children are informed of the Representative's services.

Section 17 Service Plan

Section 17 requires the Representative to prepare and submit for each fiscal year a service plan containing a statement of goals and specific objectives and performance measures. Each service plan, along with the latest annual report, is received and reviewed by the Committee. In addition, the service plan, annual report, and budget are referred to the Select Standing Committee on Finance and Government Services, which reviews the budgets of the eight independent legislative offices each year.

During deliberations, Committee Members expressed concern that the Act does not specify when the service plan must be presented. It was noted that recent practice has been for the service plan to be presented late in the calendar year, which limits the time available for the Committee to complete its review.

The Committee views its role in reviewing the service plan as an important one. Accordingly, it is recommended that the Act be amended to require the service plan to be presented by September 30, as is the current requirement for the annual report.

Recommendation #6:

Require the Representative to deliver the service plan to the Speaker before September 30 of each year.

Section 30 Review of the Act

During the consultation process, it was noted that no provisions exist for reviews of the Act beyond the current one. Written submissions to the Committee from Unicef Canada and the Advisory Committee for Children and Youth with Special Needs specifically proposed that future periodic reviews be required to ensure the currency and relevance of the legislation.

The Committee sees merit in this proposal and recommends that section 30 be updated to require statutory reviews by the Committee on an ongoing five-year basis.

Recommendation #7:

Require the Select Standing Committee on Children and Youth to undertake a comprehensive review of this Act or a review of portions of this Act every 5 years, with the first 5-year period beginning on April 1, 2012.

Summary of Recommendations

The Committee recommends to the Legislative Assembly that the provincial government implement in a timely manner the following recommendations for legislative amendments to the *Representative for Children and Youth Act* (the Act):

Part 2 – Appointment of Representative

1. Allow for the appointment by the Lieutenant Governor in Council of an acting Representative if the Representative is suspended, the office is vacant or the Representative is temporarily absent because of illness or another reason, and the House is dissolved and the Select Standing Committee on Children and Youth is not constituted.

Part 3 – Representative's Functions and General Powers

2. Allow the Representative to provide advocacy services to young adults between 19 and 24 years of age who are transitioning into the Community Living BC system and/or have received a reviewable service as defined under the *Representative for Children and Youth Act* within 15 months of their 19th birthday.

3. Require the Select Standing Committee on Children and Youth to complete a review of the Representative's monitoring functions described in section 6(b) by April 1, 2015.

Part 4 – Reviews and Investigations of Critical Injuries and Deaths

4. Authorize the Representative to investigate the critical injury or death of a child if a public body requests and provides written consent despite 13(1)(c).

5. Allow the Representative to disclose the results of an individual review with the public body or director responsible for the reviewable service.

Part 5 – Administrative and General Provisions

6. Require the Representative to deliver the service plan to the Speaker before September 30 of each year.

7. Require the Select Standing Committee on Children and Youth to undertake a comprehensive review of this Act or a review of portions of this Act every 5 years, with the first 5-year period beginning on April 1, 2012.

Appendix A: Schedule of Meetings

September 7, 2011	Approval of the work plan
October 6, 2011	Office of the Representative for Children and Youth: Mary Ellen Turpel-Lafond, Representative for Children and Youth; Jeremy Berland, Deputy Representative for Children and Youth; John Greschner, Chief Investigator and Associate Deputy Representative
October 20, 2011	Ministry of Children and Family Development: Stephen Brown, Deputy Minister; Derek Sturko, Associate Deputy Minister and Chief Operating Officer
November 3, 2011	Hon. E. N. (Ted) Hughes
February 22, 2012	Office of the Representative for Children and Youth: Mary Ellen Turpel-Lafond, Representative for Children and Youth; Ministry of Children and Family Development: Stephen Brown, Deputy Minister
March 6, 2012	Deliberations
March 13, 2012	Deliberations
March 28, 2012	Deliberations
April 17, 2012	Deliberations
May 1, 2012	Approval of Report

Appendix B: Written Submissions

Advisory Committee for Children and Youth with Special Needs, Paul Pallan, Sub-9

Affiliation of Multicultural Societies and Services Agencies of BC (AMSSA), Melissa McDowell, Sub-11

BC Association for Community Living, Faith Bodnar, Sub-13

Clare Marie Belanger, Sub-5

Canadian Federation of University Women, Susan Murphy, Sub-3

Caring for First Nations Children Society, Linda Lucas, Sub-12

Federation of BC Youth in Care Networks, Jocelyn Helland, Sub-1

Ray Ferris, Sub-4

First Call: BC Child & Youth Advocacy Coalition, Adrienne Montani, Sub-7

First Nations Health Council/First Nations Child & Family Wellness Council, Grand Chief Doug Kelly, Sub-14

Mary Manning Centre/Child Abuse Prevention & Counselling Society, Judith Wright, Sub-2

Mychael Company, Dr. Mychael Gleeson, Sub-6

Public Guardian and Trustee of British Columbia, Catherine Romanko, Sub-10

Society for Children and Youth of BC (SCY), Andrea Lemire, Sub-15

Unicef Canada, Marvin Bernstein, Sub-8